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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-218008 DATE: April 8, 1985
MATTER OF: Polaris, Inc.

DIGEST:

1. Protest against sole-source contract award is denied where procuring agency reasonably determined that the awardee was the only firm capable of performing the required work.
2. Absent evidence of unfair agency action, the fact that a sole-source contract award may result in the awardee gaining a competitive advantage in future procurements is not in itself objectionable.
3. Request for reimbursement of costs of responding to a CBD sources sought announcement and of pursuing a protest with GAO is denied where agency did not unreasonably exclude the protester from participating in the procurement.

Polaris, Inc. (Polaris), protests the award of a sole-source contract to evaluate the Department of Housing and Urban Development (HUD) forms administration system to HAY Management Consultants under HUD solicitation No. HC-13240.

The protest is denied.

HUD's Office of Administrative and Management Services administers forms used by HUD, maintains a history file on each form, and administers HUD's Automated Report and Data Inventory Control System. HUD determined that its system needed to be improved because much of the information in the files and data base was incomplete and inaccurate. HUD also decided that it would benefit from an evaluation of its forms management program by an independent organization. Therefore, HUD, anticipating that small purchase procedures could be used, sent a request for quotations to seven firms, not including the protester, that HUD believed had the

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capability and experience to perform the evaluation. HAY was the only firm that responded, and HUD found that HAY had the necessary ability and experience.

Because HAY's estimated cost was greater than the small purchase limitation, HUD published an announcement in the Commerce Business Daily (CBD) requesting replies from firms interested in performing the study and stating that a sole-source contract would be negotiated with HAY unless HUD received responses from other qualified firms. The CBD announcement identified the tasks to be performed as (1) review HUD's forms development program; (2) demonstrate a methodology for improving the efficiency and effectiveness of forms development including a comparative, development and design analysis of the forms; (3) assess current automation capabilities; and (4) develop recommendations for implementing the methodology developed. Interested potential offerors were required to submit information concerning previous experience or examples where the firm tied forms development to agency automation activities to improve the interface between forms and automation, samples of revised forms, and a list of previous clients.

Six firms, including Polaris, responded to the CBD announcement. HUD subsequently requested the protester to submit additional information about a project Polaris performed for the Department of Defense. After reviewing the responses, HUD concluded that none of the six firms had the technical ability to perform the required tasks. Concerning the protester, HUD found that its response did not demonstrate the capability to develop an overall comparative data analysis system, a prominent part of the work to be performed. HUD further noted that while Polaris had developed forms for the Department of Defense, these forms had not been given final approval and therefore could not be used to assess Polaris' capability to perform the study required by HUD.

Based on these findings, HUD awarded a sole-source contract to HAY.

Polaris alleges that given the level of interest in the procurement expressed by qualified vendors, HUD improperly negotiated a sole-source contract with HAY. Polaris asserts

that the information it submitted to HUD in fact demonstrated that Polaris has the capability and experience to perform the study desired by HUD and, therefore, that HUD was required to give Polaris the opportunity to compete for the contract. Polaris further argues that finding Polaris incapable of performing the study amounted to a nonresponsibility determination, which HUD was required to submit to the Small Business Administration (SBA) for a final decision. Finally, Polaris protests that the sole-source award to HAY will give HAY a competitive advantage in future follow-on procurements for the development of forms. Polaris requests that we require HUD to terminate the contract with HAY and conduct a competitive procurement for the study. In the alternative, Polaris requests reimbursement for the costs it incurred in responding to the CBD announcement and in pursuing its protest with this Office.

When negotiating contracts, federal procuring activities are required to solicit proposals from the maximum number of firms practicable. A sole-source award may be justified, however, where it is required by the government's legitimate minimum needs. Thus, our Office will not object to the award of a sole-source contract where an agency, in attempting to ascertain if alternative sources exist, makes its essential requirements clear to potential offerors and allows them an opportunity to demonstrate their ability to comply, but then reasonably determines that only the one firm is capable of meeting its needs. Masstor Systems Corp., 64 Comp. Gen. ____ (1984), 84-2 C.P.D. ¶ 598; Eagle Research Group Inc., B-213725, May 8, 1984, 84-1 C.P.D. ¶ 514.

Here, HUD clearly made a significant effort to determine whether firms other than HAY could meet the agency's needs. HUD solicited quotations from firms it believed capable of performing the study, and synopsised its requirements in the Commerce Business Daily. The synopsis detailed HUD's requirements and specified the information for potential interested, offerors to submit so that HUD could judge a firm's qualifications to perform the required work. It was only after HUD reviewed the information submitted by six potential offerors, including additional information it requested from Polaris, and contacted Polaris' reference, that HUD concluded that none had the technical capability to perform the required study and decided to proceed with a sole-source award to HAY.

As to Polaris' argument that HUD should have found that Polaris has the qualifications to perform the required study, our Office will disturb an agency's determination that a particular contractor is not capable, in a technical sense, of meeting the government's needs only where that determination is clearly unreasonable. A.T. Kearney, Inc., B-205898.2, Feb. 28, 1983, 83-1 C.P.D. ¶ 190.

Here, one of HUD's primary concerns was that the awardee must be capable of performing a comparative data analysis including design and development reviews. HUD evaluated the information submitted by Polaris and determined that this information did not demonstrate that Polaris could perform the required analysis. We also have reviewed the qualification statement submitted by Polaris and, while the statement shows that Polaris has experience in automating forms procedures, all the statement says about the analysis is that Polaris will do what HUD wants. In our view, since HUD clearly advised potential offerors of the requirement through the CBD announcement, and since that announcement stated HUD's belief that only HAY could meet the agency's needs in all respects, it was incumbent on any firm responding to the announcement to do more than merely restate the agency's needs. A protester has the burden to prove its case, Venram Inc., B-214657, July 2, 1984, 84-2 C.P.D. ¶ 7, and our review of the record simply provides no legal basis to question the reasonableness of HUD's finding, based on Polaris' response, that Polaris is not capable of performing the comparative analysis desired by HUD.

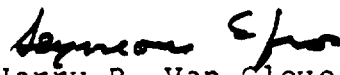
HUD also denies that in finding Polaris not technically capable of performing the contract, the agency was finding Polaris nonresponsible and therefore, was required to submit its finding to SBA for review. HUD concedes that pursuant to the Small Business Act, 15 U.S.C. § 637(b)(7)(A) (1982), the SBA has exclusive authority to determine whether a small business is responsible, that is, capable of performing a particular contract, but states that it did not believe the statute applied where, as here, HUD was determining whether to conduct a competitive procurement. HUD notes that it contacted SBA to verify this belief and was informed by the SBA legal staff that the certification procedures do not apply when an agency determines that a firm responding to publication of a sources-sought synopsis is found unqualified.

Polaris has not disputed HUD's response, and we have no basis to question SBA's interpretation of its procedures. In this regard, we defer to the interpretation given a statute by the officers or agency charged with its administration. See Colorado State University, B-194627, Dec. 27, 1979, 79-2 C.P.D. ¶ 438.

Finally, HUD asserts that although there may be follow-on contracts for forms, the work to be performed under the instant contract is unique and, therefore, the sole-source award to HAY will not give HAY a competitive advantage in future procurements. We have no reason to question this response. In any event, unless some type of unfair government action can be shown, the fact that an award may result in a company gaining an advantage in future procurements is not in itself objectionable. The Williard Company Inc., B-199705, Feb. 18, 1981, 81-1 C.P.D. ¶ 102.

Concerning Polaris' request for reimbursement of the costs of preparing its response to the CBD announcement and of pursuing its protest to this Office, since we have determined that HUD had a reasonable basis to negotiate a sole-source contract with HAY, there is no basis on which to award Polaris any costs incurred incident to the procurement. See 49 Fed. Reg. 49,417, 49,422 (1985)(to be codified at 4 C.F.R. § 21.6(d),(e)).

The protest and request for costs are denied.

for 
Harry R. Van Cleve
General Counsel